

WADE McNEIL
FLORA McNEIL

IBLA 82-922, 82-923,
82-924, 82-925

Decided August 16, 1982

Appeal from decisions of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 72212 through A MC 72223; A MC 72600 through A MC 72609.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

APPEARANCES: Flora McNeil, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Flora McNeil appeals from decisions of the Arizona State Office, Bureau of Land Management (BLM), dated May 20, 1982, which rejected the evidence of annual assessment work for 1981, and declared the unpatented Flora Belle #1, #2, #5, #6, Big Horn #1, #2, #3, #4; Copper Gem #1, #2, #3, #4; and Scorpion #2, #3, #4, #5, #6, #7, #17, #19, #21, #22 lode mining claims, A MC 72212 through A MC 72223 and A MC 72600 through A MC 72609, abandoned and void because the evidence of annual assessment work had not been filed on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and

43 CFR 3833.2-1. The evidence of assessment work was received and date stamped by BLM January 4, 1982, at 7:45 a.m.

Appellant states that she mailed the instruments describing the assessment work for 1981 immediately upon receipt of the proofs of labor from the county recorder of Maricopa County, Arizona, where they were recorded December 22, 1981, and that she thought they had plenty of time to be received by December 30 in the BLM office.

The envelope bears a postmark of December 30, 1981, Yarnell, Arizona.

[1] Section 314 of FLPMA and the implementing regulations in 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each year be filed in the proper BLM office on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although the evidence shows the documents were mailed on December 30, 1981, the due date, the regulations define "file" to mean being received and date stamped by the proper BLM office. 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope was delayed by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of untimely delivery of his filings. Don Chris A. Coyne, 52 IBLA 1 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*. Filing is accomplished only when a document is delivered and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Appellant should confer with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

